

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ANGELA G. LINDSAY, an individual,  
PENELOPE WRIGHT, an individual,  
TIMOTHY E. PIERACCI, an individual,  
MICHAEL A. PIERACCI, an individual and  
MITCHELL D. PIERACCI, an individual,

Plaintiffs,

v.

CLAUDIA A. LINDSAY and DONALD W.  
LINDSAY, individually and as Trustees of the  
SEIFERT FAMILY TRUST,

Defendants.

03:05-CV-00305-LRH (RAM)

ORDER

Presently before the court is defendants Claudia Lindsay and Donald Lindsay's (collectively, "Defendants") Motion for Order Allowing Payment of Attorney's Fees and Costs (# 43<sup>1</sup>). Plaintiffs Angela Lindsay, Penelope Wright, Timothy Pieracci, Michael Pieracci, and Mitchell Pieracci (collectively, "Plaintiffs") have filed an opposition (# 49), and Defendants replied (# 50). Also before the court is Defendants' Motion for Order Bifurcating Trial (# 51). Plaintiffs have filed an opposition (# 57), and Defendants replied (# 58).

This is an action challenging the actions of Defendants in relation to the administration of

<sup>1</sup>Refers to the court's docket number.

1 the Seifert Family Trust (the “Trust”). On May 24, 2005, Plaintiffs filed this action asserting the  
 2 following causes of action: breaches of fiduciary duties, conversion, constructive trust, breach of  
 3 trust agreement, failure to provide information, failure to keep and render accounts, accounting,  
 4 injunctive relief, removal of trustees and surcharge, intentional misrepresentation, and punitive  
 5 damages.

#### 6 **I. Motion for Order Allowing Payment of Attorney’s Fees and Costs**

7 Defendants have filed a motion requesting that the litigation expenses incurred by them in  
 8 defending this action be reimbursed from the funds of the trust. Furthermore, Defendants request  
 9 payment for further reasonable expenses to defend this action. According to Defendants, their  
 10 financial constraints have prevented them from conducting more than a minimal amount of  
 11 discovery. Furthermore, Defendants state that their financial constraints have resulted in their  
 12 inability to defend themselves further. Plaintiffs oppose the motion arguing that litigation expenses  
 13 must be paid by the trustee individually where the litigation is necessitated by the trustee’s breach  
 14 of a fiduciary duty.

15 Section 6.9 of the Trust provides, “[t]his trust shall be governed by the laws of the State of  
 16 California.” In California, the allowance of litigation expenses rests in the sound discretion of the  
 17 court. *Whittlesey v. Aiello*, 128 Cal.Rptr.2d 742 (2002) (citing *Estate of Vokal*, 263 P.2d 64 (Cal.  
 18 1953)). “The underlying principle which guides the court in allowing costs and attorneys’ fees  
 19 incidental to litigation out of a trust estate is that such litigation is a benefit and a service to the  
 20 trust.” *Id.* (quoting *Dingwell v. Seymour*, 267 P. 327 (Cal. 1928)). “Consequently, where the trust  
 21 is not benefited by litigation, or did not stand to be benefited [sic] if the trustee had succeeded,  
 22 there is no basis for the recovery of expenses out of the trust assets.” *Id.*

23 In the case at bar, the court finds that it would be inappropriate to permit trust assets to be  
 24 used for the payment of Defendants’ litigation expenses. Significant questions have been raised in  
 25 this action concerning whether certain expenses were incurred to benefit the settlor of the trust or  
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1 for the benefit of Defendants. Because it is unclear at this time whether this litigation is a benefit to  
2 the trust, Defendants' motion is denied. However, in the event that Defendants prevail in this  
3 action, Defendants may file a new motion requesting that their litigation expenses be reimbursed  
4 from the trust assets.

## 5 **II. Motion for Order Bifurcating Trial**

6 Defendants are seeking to bifurcate the trial arguing that the court should determine what  
7 portion of the Trust funds were expended for the personal care of the settlor. Defendants argue that  
8 the portion of the Trust funds that were expended for the care of the settlor "comes off the top" of  
9 the Trust and should be decided before making a determination regarding the potential liability of  
10 Defendants. Defendants contend that, although the cash balance of the Trust exceeds \$260,000, the  
11 trust may be insolvent as administrative expenses, healthcare expenses, and in-home care expenses  
12 have been accrued but not paid to the Defendants. In opposition to the motion, Plaintiffs argue that  
13 no valid reason exists for bifurcating the trial.

14 Rule 42(b) of the Federal Rules of Civil Procedure provides as follows:

15 The court, in furtherance of convenience or to avoid prejudice, or when separate  
16 trials will be conducive to expedition and economy, may order a separate trial of any  
17 claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of  
18 any number of claims, cross-claims, counterclaims, third-party claims, or issues,  
always preserving inviolate the right of trial by jury as declared by the Seventh  
Amendment to the Constitution or as given by a statute of the United States.

19 Fed. R. Civ. P. 42(b). Thus, bifurcation is appropriate if it would further convenience, avoid  
20 prejudice, or be conducive to expedition and economy. *Id.* This court has broad discretion in  
21 determining whether to bifurcate a trial. *Hangarter v. Provident Life and Acc. Ins. Co.*, 373 F.3d  
22 998, 1021 (9th Cir. 2004) (quoting *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir.  
23 2002)).

24 In this case, the court finds that bifurcation is not appropriate as it will not further  
25 convenience, avoid prejudice, or be conducive to expedition and economy. The trial in this case  
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1 will revolve around the conduct of Defendants in their administration of the Trust. Evidence  
2 relating to the expenses incurred by the Trust is relevant to several of Plaintiffs' causes of action.  
3 Therefore, it appears likely to the court that a bifurcated trial would result in witnesses having to  
4 testify at two separate proceedings. This potential duplication of evidence and proceedings is likely  
5 to increase the litigation costs and delay the final resolution of this case. For these reasons,  
6 Defendants' motion for a bifurcated trial is denied.

7 IT IS THEREFORE ORDERED that Defendants' Motion for Order Allowing Payment of  
8 Attorney's Fees and Costs (# 43) is hereby DENIED.

9 IT IS FURTHER ORDERED that Defendants' Motion for Order Bifurcating Trial (# 51) is  
10 hereby DENIED.

11 IT IS SO ORDERED.

12 DATED this 22<sup>nd</sup> day of January, 2007.



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15 LARRY R. HICKS  
16 UNITED STATES DISTRICT JUDGE  
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